

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

PAULINE G. MONTOYA,

Plaintiff,

vs.

Civ. No. 00-941 WWD/LFG

WILLIAMS COMPANIES, INC., a  
Delaware corporation, WILLIAMS ENERGY  
SERVICES, INC., WILLIAMS FIELD  
SERVICES, INC., all subsidiaries of  
WILLIAMS COMPANY, INC.,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court upon Defendants' Motion to Enforce Dismissal Without Prejudice and Enforce Magistrate Judge's Order ("Motion"). On April 19, 2001, counsel and the Honorable Lorenzo F. Garcia participated in a conference. At the conference, Judge Garcia suggested that the Plaintiff could either (1) litigate the claim as it then was and seek to amend if Title VII claims became ripe for determination; or (2) Plaintiff could dismiss her lawsuit, without prejudice provided Defendants would enter into a written Tolling Agreement so as to bar a statute of limitations defense to a later lawsuit. The parties agreed to follow the second option. No written order was entered to memorialize the "agreement." Since he was not acting as the trial judge by consent, Judge Garcia did not have the authority to enter an order requiring dismissal of the lawsuit. Counsel for each side have engaged in delay and dilatory tactics: Plaintiff's counsel in implementing the agreement as to a voluntary dismissal without prejudice coupled with a Tolling Agreement; and Defendants' counsel in providing information to the

EEOC. I have no jurisdiction over the Defendants' conduct in the EEOC matter, but I am not barred from considering the Defendants' conduct there insofar as it influenced Plaintiff's conduct in connection with the events following the April 19th conference. The conduct of counsel in this matter has not been acceptable. If counsel are unable to cooperate in a professional way extending to each other the courtesies consistent with being practitioners in this Court, I will schedule status conferences as necessary to foster appropriate interaction between counsel. Consideration of sanctions is denied at this time. Amendment of the complaint will be considered upon proper motion *unless* the parties can agree on such amendment. The Motion to Enforce Dismissal Without Prejudice and Enforce Magistrate Judge's Order (**Docket #25**) will be denied.

**IT IS SO ORDERED.**

  
UNITED STATES MAGISTRATE JUDGE